



AGENDA DATE: 01/18/01
AGENDA ITEM: 11A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

IN THE MATTER OF THE APPLICATION OF)
MIDDLESEX WATER COMPANY FOR)
AUTHORITY TO BORROW UP TO \$1,600,000)
AND TO ISSUE EVIDENCES OF)
INDEBTEDNESS PURSUANT TO THE)
ENVIRONMENTAL INFRASTRUCTURE TRUST)
FINANCING PROGRAM)

ORDER AUTHORIZING BORROWING
AND ISSUANCE OF EVIDENCES OF
INDEBTEDNESS

DOCKET NO. WF00080566

Dennis G. Sullivan, Esq., Middlesex Water Company and Norris, McLaughlin & Marcus, P.A., by Walter G. Reinhard, Esq., Somerville, New Jersey, for Middlesex Water Company

Fred S. Grygiel, Chief Economist, Mark C. Beyer, Manager, Office of the Economist, and Michael Gallagher, Director, Division of Water and Wastewater, on behalf of the Staff of the Board of Public Utilities

BY THE BOARD:

Middlesex Water Company (Middlesex or Petitioner), a public utility of the State of New Jersey, by petition to the Board of Public Utilities (Board) on August 11, 2000, as amended by letter dated November 30, 2000, filed on behalf of itself or its yet to be formed subsidiary, for various authorizations, pursuant to N.J.S.A. 48:3-7, 48:3-9 and N.J.A.C. 14:1-5.9. These authorizations are:

- a) For Middlesex or Bayview Water Company¹, to borrow up to \$1.6 million (Loans) from the New Jersey Environmental Infrastructure Trust (Trust) and the State of New Jersey, acting by and through the New Jersey Department of Environmental Protection (State) and to make, execute and deliver to the Trust and the State documents required in connection therewith;

¹ Middlesex is in the process of acquiring the assets of Fortescue Realty Company, a water utility serving approximately 300 customers in the Village of Fortescue in Downe Township, Cumberland County. Middlesex has indicated that it may form a separate subsidiary to operate the Fortescue Realty Company. This separate subsidiary is not yet formed, but will be named Bayview Water Company. Middlesex has sought approval from the Board to form Bayview at the time of closing on the sale of Fortescue Realty Company (BPU Docket No. WM99030185).

- b) For Middlesex, to make, execute and deliver, if necessary, one or more Supplemental Indentures of Mortgage to First Union National Bank, as Trustee, for the purpose, among other things, of describing the terms of Petitioner's First Mortgage Bonds; or to make such guarantee or guarantees as are required by the State and the Trust to secure the Loans;
- c) If the Loans are to be made to Bayview, for Middlesex to guarantee such loans to Bayview, and to make, execute and deliver to the Trust and the State documents required in connection therewith;
- d) For Middlesex, if necessary, to issue and deliver to the Trust and the State up to \$1.6 million principal amount of First Mortgage Bonds, in accordance with such borrowings; and
- e) For Bayview, if necessary, to borrow up to \$1.6 million from, and make, execute and deliver to Middlesex one or more loan agreements and to make, execute and deliver to Middlesex documents required in connection therewith.

Petitioner's First Mortgage Bonds, if required to be issued, will bear interest at approximately one-half of the interest rate of the Trust's Bonds, which are intended to be sold by competitive bidding. Petitioner requests that the relief set forth in Paragraphs a through e above be granted by the Board without the requirement for a further Board Order as to pricing.

The Trust will issue and sell its tax-exempt bonds and the proceeds, together with other State monies, will be used to create a fund available for loans to qualified borrowers, all pursuant to the 2001 New Jersey Environmental Infrastructure Trust Financing Program. Loans to various entities, including the Loans to the Petitioner or Bayview, will be made from the loan fund. Petitioner proposes to issue and deliver its First Mortgage Bonds, and/or other evidences of indebtedness, such as a guarantee if necessary, to the Trust and the State as security for the \$1.6 million in Loans from the Trust and the State. The Trust Bonds will be sold through one or more underwriters selected by competitive bid with a fixed rate of interest, under circumstances where competitive conditions will be maintained throughout.

The proceeds of the Loans from the Trust will be used by Middlesex, or Bayview, to finance a project of rehabilitating the water distribution system formerly operated by Fortescue Realty Company ("FRC"), including construction of one or more wells and a storage reservoir; to pay qualified short-term debt, if any, incurred in connection with this and other qualified projects; and to pay any allowed issuance expenses and related costs. The assets of FRC are expected to be purchased by Middlesex or a wholly-owned subsidiary, Bayview, prior to consummation of the Loans.

Petitioner has stated that no franchise or right will be capitalized directly or indirectly by the issuance of its First Mortgage Bonds, if necessary.

The Board, after investigation, having considered the record and exhibits submitted in this proceeding, being satisfied with the action proposed to be taken by Petitioner as indicated

above and finding that the proposed transactions are to be made in accordance with law, and in approving the purposes thereof, HEREBY AUTHORIZES:

- a) Bayview to borrow up to \$1.6 million from the New Jersey Environmental Infrastructure Trust and the State of New Jersey, acting by and through the New Jersey Department of Environmental Protection, and to make, execute and deliver Loan Agreements therefore and to make, execute and deliver to the Trust and the State documents required in connection therewith;
- b) For Middlesex to guarantee such loans, if so required by the Trust and the State, and to make, execute and deliver to the Trust and the State documents required in connection therewith;
- c) If so required by the Trust and the State, for Middlesex to issue and deliver up to \$1.6 million principal amount of First Mortgage Bonds; and for Middlesex to make, execute and deliver one or more Supplemental Indentures of Mortgage to First Union National Bank, as Trustee, as security for the Loan; and
- d) In the event that the Trust and the State require Middlesex rather than Bayview to borrow the funds, then Middlesex is hereby authorized to do so in order to rehabilitate the former FRC system; to issue up to \$1.6 million principal amount of its First Mortgage Bonds as security; and to make, execute and deliver such Supplemental Indentures of Mortgage, as are required, to First Union National Bank, as Trustee; then and in that event, Bayview is authorized to borrow up to \$1,600,000 from Middlesex at an interest rate sufficient to pay the interest on the First Mortgage Bonds, so as to finance the rehabilitation program of the former FRC system.

This Order is issued subject to the following provisions:

- 1) Middlesex or Bayview purchases FRC;
- 2) This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner or Bayview; nor as certifying that the securities authorized to be issued and sold will be represented by tangible or intangible assets of commensurate value or investment cost;
- 3) This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future petition or in any proceedings with respect to rates, franchises, service, financing (including method of sale of securities), accounting, capitalization, depreciation or in any other matters affecting the Petitioner or Bayview;
- 4) Petitioner shall submit a schedule indicating complete details of the issuance cost no later than sixty (60) days following the closing date for this transaction;
- 5) Petitioner or Bayview shall furnish the Board with copies of the executed Supplemental Indentures or other evidences of indebtedness;

- 6) The Bonds herein authorized to be issued shall not, if issued, be redeemed at a premium, prior to maturity, without further Board approval;
- 7) Petitioner shall utilize the proceeds of the Loans as stated above; and
- 8) The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised on or before December 31, 2001.

DATED: January 18, 2001

BOARD OF PUBLIC UTILITIES
BY:

[SIGNED]
HERBERT H. TATE
PRESIDENT

[SIGNED]
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

[SIGNED]
FRANCES L. SMITH
BOARD SECRETARY